

QUINN EMANUEL URQUHART & SULLIVAN, LLP

BOIES SCHILLER FLEXNER LLP

Mark C. Mao (CA Bar No. 236165)

mmao@bsflp.com

44 Montgomery Street, 41st Floor

San Francisco, CA 94104

Telephone: (415) 293 6858

Facsimile: (415) 999 9695

SUSMAN GODFREY L.L.P.

William Christopher Carmody (pro hac vice)

bcarmody@susmangodfrey.com

Shawn J. Rabin (pro hac vice)

srabin@susmangodfrey.com

1301 Avenue of the Americas, 32nd Floor

New York, NY 10019

Telephone: (212) 336-8330

MORGAN & MORGAN

John A. Yanchunis (pro hac vice)

jyanchunis@forthepeople.com

Ryan J. McGee (pro hac vice)

rmcgee@forthepeople.com

201 N. Franklin Street, 7th Floor

Tampa, FL 33602

Telephone: (813) 223-5505

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

Andrew H. Schapiro (*pro hac vice*)

andrewschapiro@quinnemanuel.com

191 N. Wacker Drive, Suite 2700

Chicago, IL 60606

Telephone: (312) 705-7400

Facsimile: (312) 705-7401

Stephen A. Broome (CA Bar No. 314605)

stephenbroome@quinnemanuel.com

Viola Trebicka (CA Bar No. 269526)

violatrebicka@quinnemanuel.com

865 S. Figueroa Street, 10th Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

Facsimile: (213) 443-3100

Diane M. Doolittle (CA Bar No. 142046)

dianedoolittle@quinnemanuel.com

555 Twin Dolphin Drive, 5th Floor

Redwood Shores, CA 94065

Telephone: (650) 801-5000

Facsimile: (650) 801-5100

*Attorneys for Plaintiffs; additional counsel
listed in signature blocks below*

*Attorneys for Defendant; additional counsel
listed in signature blocks below*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**JOINT SUBMISSION RE: SEALING
PORTIONS OF JUNE 2, 2021 HEARING
TRANSCRIPT**

Referral: Hon. Susan van Keulen, USMJ

1 June 16, 2021

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th Floor
6 280 South 1st Street
7 San Jose, CA 95113

8 Re: Joint Submission re: Sealing Portions of June 2, 2021 Hearing Transcript
9 *Brown v. Google LLC*, Case No. 5:20-cv-03664-LHK-SVK (N.D. Cal.)

10 Dear Magistrate Judge van Keulen:

11 Pursuant to Your Honor's June 1, 2021 Order on Motion to Seal Courtroom for June 2
12 Discovery Hearing (Dkt. 183), Plaintiffs and Google LLC ("Google") jointly submit this statement
13 regarding sealing portions of the June 2, 2021 hearing transcript.
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Google respectfully seeks to seal the following portions of the June 2, 2021 Hearing Transcript (“Transcript”), which contain Google’s confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly, including the various types of Google’s internal identifiers/cookies and their proprietary functions. The Court sealed the June 2, 2021 hearing based on the discussion of this information pursuant to Google’s request. Dkt. 182. This Administrative Motion pertains to the following information contained in the Transcript:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
June 2, 2021 Hearing Transcript	Portions Highlighted in Yellow at 13:2, 13:8-11, 32:18-20, 36:23-37:3, 37:8-11, 37:15-20, 37:22-24, 38:2-5, 46:3-11, 46:17.	Google

The parties conferred on the proposed redactions to the Transcript. Plaintiffs believe there is no basis for any redactions, but they nonetheless do not oppose Google’s motion to seal.

I. LEGAL STANDARD

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). The right to access is further diminished where, as here, a party seeks to prevent the disclosure of information discussed during a hearing on a non-dispositive discovery motion; rather than the more stringent “compelling reasons” standard, a party seeking to seal materials in these circumstances must make only a “particularized showing” of “good cause.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). A “strong presumption of access” does **not** apply to sealed discovery documents attached to non-dispositive motions; a “party seeking disclosure must present sufficiently compelling reasons why the sealed discovery document should be released.” *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). Even at trial, sealing is appropriate when the information at issue

1 constitutes “competitively sensitive information,” such as “confidential research, development, or
 2 commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at
 3 *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.
 4 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of
 5 information, including, but not limited to, trade secrets or other confidential research, development, or
 6 commercial information”).

7 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”**
 8 **STANDARD AND SHOULD ALL BE SEALED**

9 Although the materials that Google seeks to seal here easily meet the higher “compelling
 10 reasons” standard, the Court need only consider whether these materials meet the lower “good cause”
 11 standard. Courts have repeatedly found it appropriate to seal documents that contain “business
 12 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good
 13 cause to seal is shown when a party seeks to seal materials that “contain[] confidential information
 14 about the operation of [the party’s] products and that public disclosure could harm [the party] by
 15 disclosing confidential technical information.” *Digital Reg of Texas, LLC v. Adobe Sys., Inc.*, 2014
 16 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive
 17 standing may be sealed even under the “compelling reasons” standard. *See e.g. Icon-IP Pty Ltd. v.*
 18 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information
 19 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be
 20 used to the company’s competitive disadvantage”) (citation omitted).

21 Here, the Transcript comprises confidential information regarding highly sensitive features of
 22 Google’s internal systems and operations that Google does not share publicly. Specifically, this
 23 information provides details related to the various types of Google’s internal identifiers/cookies and
 24 their proprietary functions. Such information reveals Google’s internal strategies, system designs, and
 25 business practices for operating and maintaining many of its important services while complying with
 26 legal and privacy obligations.

27 Public disclosure of the above-listed information would harm Google’s competitive standing it
 28 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of

1 Google's proprietary systems, strategies, designs, and practices to Google's competitors. That alone is
2 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
3 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google's motion to seal certain
4 sensitive business information related to Google's processes and policies to ensure the integrity and
5 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
6 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
7 "disclosure would harm their competitive standing by giving competitors insight they do not have");
8 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
9 motion to seal as to "internal research results that disclose statistical coding that is not publically
10 available").

11 Moreover, if publicly disclosed, malicious actors may use such information to seek to
12 compromise Google's internal identifier systems. Google would be placed at an increased risk of
13 cyber security threats, and data related to browsing of users could similarly be at risk. *See, e.g., In re*
14 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing "material
15 concern[ing] how users' interactions with the Gmail system affects how messages are transmitted"
16 because if made public, it "could lead to a breach in the security of the Gmail system"). The security
17 threat is an additional reason for this Court to seal the identified information. The information Google
18 seeks to redact, including the functionalities of its internal identifiers/cookies and their functionalities,
19 is the minimal amount of information needed to protect its internal systems and operations from being
20 exposed to not only its competitors but also to nefarious actors who may improperly seek access to
21 and disrupt these systems and operations. The "good cause" rather than the "compelling reasons"
22 standard should apply but under either standard, Google's sealing request is warranted.

23 **III. CONCLUSION**

24 For the foregoing reasons, Google respectfully requests that the Court seal the identified
25 portions of the Transcript.
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Respectfully,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

BOIES SCHILLER FLEXNER LLP

/s/ Andrew H. Schapiro

/s/ Mark C. Mao

Andrew H. Schapiro (admitted *pro hac vice*)
andrewschapiro@quinnemanuel.com
191 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Tel: (312) 705-7400
Fax: (312) 705-7401

Mark C. Mao (CA Bar No. 236165)
mmao@bsfllp.com
Sean Phillips Rodriguez (CA Bar No.
262437)
srodriguez@bsfllp.com
Beko Reblitz-Richardson (CA Bar No.
238027)

Stephen A. Broome (CA Bar No. 314605)
sb@quinnemanuel.com
Viola Trebicka (CA Bar No. 269526)
violatrebicka@quinnemanuel.com
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
Tel: (213) 443-3000
Fax: (213) 443-3100

brichardson@bsfllp.com
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Tel: (415) 293 6858
Fax: (415) 999 9695

Diane M. Doolittle (CA Bar No. 142046)
dianedoolittle@quinnemanuel.com
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

James W. Lee (*pro hac vice*)
jlee@bsfllp.com
Rossana Baeza (*pro hac vice*)
rbaeza@bsfllp.com
100 SE 2nd Street, Suite 2800
Miami, FL 33130
Tel: (305) 539-8400
Fax: (305) 539-1304

Jomaire A. Crawford (admitted *pro hac vice*)
jomairecrawford@quinnemanuel.com
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

William Christopher Carmody (*pro hac vice*)
bcarmody@susmangodfrey.com
Shawn J. Rabin (*pro hac vice*)
srabin@susmangodfrey.com
Steven Shepard (*pro hac vice*)
sshepard@susmangodfrey.com
Alexander P. Frawley (*pro hac vice*)
afrawley@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: (212) 336-8330

Josef Ansorge (admitted *pro hac vice*)
josefansorge@quinnemanuel.com
Carl Spilly (admitted *pro hac vice*)
carlspilly@quinnemanuel.com
1300 I Street NW, Suite 900
Washington D.C., 20005
Tel: (202) 538-8000
Fax: (202) 538-8100

Amanda Bonn (CA Bar No. 270891)
abonn@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Tel: (310) 789-3100

Jonathan Tse (CA Bar No. 305468)
jonathantse@quinnemanuel.com
50 California Street, 22nd Floor
San Francisco, CA 94111
Tel: (415) 875-6600
Fax: (415) 875-6700

John A. Yanchunis (*pro hac vice*)
jyanchunis@forthepeople.com
Ryan J. McGee (*pro hac vice*)
rmcgee@forthepeople.com
MORGAN & MORGAN, P.A.
201 N Franklin Street, 7th Floor

Attorneys for Defendant Google LLC

1 Tampa, FL 33602
2 Tel: (813) 223-5505
3 Fax: (813) 222-4736

4 Michael F. Ram (CA Bar No. 104805)
5 mram@forthepeople.com
6 MORGAN & MORGAN, P.A.
7 711 Van Ness Avenue, Suite 500
8 San Francisco, CA 94102
9 Tel: (415) 358-6913

10 *Attorneys for Plaintiffs*
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ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission.
Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has
concurred in the filing of this document.

Dated: June 16, 2021

By /s/ Andrew H. Schapiro
Andrew H. Schapiro
Counsel on behalf of Google LLC